



## *City of El Paso – City Plan Commission Staff Report*

### **Extension of Term for completion of Pedestrian Walkway Improvements Related to the Vacation of a portion of Boston Avenue**

City Council approved the vacation of a portion of Boston Avenue on April 14, 2009. The following conditions were imposed by City Council:

1. That access to the alley remain unobstructed for access by the City and utilities be given full access to the alleys.
2. That a 15-foot wide pedestrian walkway be provided that traverses the subject property from Oregon St. to Mesa St. and shall be landscaped and able to accommodate bicyclists. The walkway shall be built to City standards, including ADA requirements, and landscaping shall consist of plants selected from the approved plant list on file and maintained in the development services department.
3. That the improvements to the pedestrian walkway be completed within two years of the date of approval by the El Paso City Council to vacate the portion of Boston Avenue, or the property reverts back to the City of El Paso.
4. That the full length and width shall be retained as an easement for utilities and no structures shall be constructed that interfere with existing utility infrastructure and access.

On April 5, 2011, the City Council granted a one-year extension of the term to complete the pedestrian walkway improvements, and amended the conditions to require an additional 5-foot pedestrian walkway on the northern side of the property from Oregon to Mesa Street, and additional landscaping for both pedestrian walkways (a minimum of 18 canopy trees along each walkway).

On April 3, 2012, the City Council granted another one-year extension of the term to complete the pedestrian walkway improvements, and amended the conditions to require that the vacated portion of Boston will remain open for vehicular and pedestrian traffic until construction of improvements begins and to set a time limit for construction.

The applicant has not begun the pedestrian walkway improvements and has requested an additional three-year extension to complete the improvements. The applicant is currently working with the City to develop a plan for the adjacent property that will be mixed-use with student housing. The street improvements will be integrated into the site. The proposed improvement plan, originally adopted as Exhibit B, at a minimum will have all previously agreed-upon conditions, but may be amended, subject to approval by the City Manager or designee, to add pedestrian amenities.

The City Development Department recommends approval of an additional three-year term to complete the required pedestrian improvements due to the desire to incorporate the street improvements into the adjacent development.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING ORDINANCE NO. 017764 WHICH AMENDED  
ORDINANCE NO. 017524 WHICH AMENDED ORDINANCE NO. 017109 WHICH  
VACATED A PORTION OF BOSTON AVENUE, TO ALLOW A THREE YEAR  
EXTENSION TO COMPLETE IMPROVEMENTS ON THE PEDESTRIAN WALKWAY  
AND TO REVISE THE QUITCLAIM DEED TO REFLECT THE EXTENDED TIME FOR  
COMPLETION.**

**WHEREAS**, on April 14, 2009 the City Council of El Paso passed an ordinance vacating a portion of Boston Avenue, Alexander Addition, City of El Paso, El Paso County, Texas, and conveying the vacated portion to **EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P.**; and,

**WHEREAS**, one of the conditions placed on the vacation of the land was that EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. would construct a 15-foot wide pedestrian walkway traversing the subject property from Oregon St. to Mesa St, to be landscaped and able to accommodate bicyclists, built to City standards, including ADA requirements, and consist of plants selected from the approved plant list on file and maintained in the development services department; and,

**WHEREAS**, the above improvements were to be completed within two years from the date the vacation was approved by City Council or the property would revert back to the City of El Paso; and,

**WHEREAS**, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P previously requested two one-year extensions and the City on April 5, 2011 and April 3, 2012, granted such extensions for additional consideration; and,

**WHEREAS**, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P is still unable to complete the improvements, and is proposing a development on the adjacent site to be built in conjunction with the street improvements, and therefore requests an additional three-year extension and in exchange for the three year extension the street will remain open for public vehicular and pedestrian use;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

1. That in consideration for adding another three years to complete the required pedestrian walkway improvements, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. will continue to keep the street open for public use for both vehicular and pedestrian traffic until such time that the construction of the required pedestrian walkway improvements begins; and,

2. That once the construction of the required improvements begins, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P shall have six months to complete the required pedestrian walkway improvements, provided, however, that the city manager may grant a three month extension; and,

3. That the El Paso City Council has determined that the additional consideration provided by EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. is adequate consideration for amending Ordinance No. 017109, Ordinance No. 017524, Ordinance No. 017764 and the Quitclaim Deed to grant the three year extension to complete the pedestrian walkway improvements; and,

4. That the improvement plan, labeled as Exhibit B in Ordinance 017109, may be amended upon approval of the City Manager or designee to add pedestrian amenities, provided that it complies with all conditions previously imposed; and,

5. That the conditions contained in Ordinance No. 017109, Ordinance No. 017524, Ordinance No. 017764 and the Quitclaim Deed dated April 14, 2009, Document # 20090026473 and the Quitclaim Deed dated April 5, 2011, Document # 20110025985 and the Quitclaim Deed dated April 9, 2012, Document #20120025701 be amended as follows:

A three year extension is granted for the completion of the improvements to the pedestrian walkways so that the improvements shall be completed within seven years of April 14, 2009 or the City, at its discretion, if and only if the improvements are not completed by April 14, 2016, may require the property owner to dedicate back to the City of El Paso, the interest conveyed by this deed and, if requested by the City of El Paso upon the dedication back to the City, remove any improvements. Should the property revert back to the City, the City shall not be required to compensate EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. for the costs of any improvements completed.

6. The street shall remain open to both vehicular and pedestrian traffic until such time that the construction of the required pedestrian walkway improvements begins. Once the construction of the required improvements begins, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. shall have six months to complete the required pedestrian walkway improvements, provided, however, that the city manager may grant a three month extension; and,

7. In addition, the City Manager is authorized to sign an instrument amending the quitclaim deed to include the amended conditions.

Except as hereby expressly amended, all conditions and requirements stated in Ordinance No. 017109 and Ordinance No. 017524, and Ordinance No. 017764 shall remain in full force and effect.

**PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.**

**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook, Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO CONTENT:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mathew McElroy,  
Director  
City Development

\_\_\_\_\_  
Assistant City Attorney

**ORDINANCE NO.** \_\_\_\_\_

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**THE STATE OF TEXAS    }  
                                     }  
**COUNTY OF EL PASO     }****

**THIRD AMENDED QUITCLAIM DEED**

This quitclaim deed amends the quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 21, 2009, Document # 20090026473 and the first amended quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 15, 2011, Document # 20110025985 and the second amended quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 9, 2012, Document # 20120025701, in which the city, in consideration of the receipt by the **CITY OF EL PASO** of TWENTY-FIVE DOLLARS (\$25.00) and other valuable consideration, released and quitclaimed unto EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. (Collectively, the "Grantee"), El Paso, El Paso County, an undivided 50% interest to each Grantee, all its rights, title interest, claim and demand in and to the property which was vacated, closed and abandoned by Ordinance No. 017109, passed and approved by the City Council of the City of El Paso on April 14, 2009, and described as **A PORTION OF BOSTON AVENUE, ALEXANDER ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS**, which is more fully described in the attached metes and bounds description, identified as Exhibit "A" and in the attached survey identified as Exhibit "B.

The conditions contained in the original quitclaim deed and in the first and second amended quitclaim deed are amended as follows:

A three year extension is granted for the completion of the improvements to the pedestrian walkways so that the improvements shall be completed within seven years of April 14, 2009 or the City, at its discretion, if and only if the improvements are not completed by April 14, 2016, may require the property owner to dedicate back to the City of El Paso, the interest conveyed by this deed and, if requested by the City of El Paso upon the dedication back to the City, remove any improvements. Should the property revert back to the City, the City shall not be required to compensate EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P for the costs of any improvements completed.

Except as hereby expressly amended, the quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 21, 2009, Document # 20090026473, and

the first amended quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 15, 2011, Document # 20110025985, and the second amended quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 9, 2012, Document # 20120025701, shall remain in full force and effect.

WITNESS the following signatures and seal this \_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF EL PASO

\_\_\_\_\_  
Joyce Wilson, City Manager

**APPROVED AS TO CONTENT:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mathew McElroy, Director  
City Development Department

\_\_\_\_\_  
Assistant City Attorney

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS    )**  
**COUNTY OF EL PASO     )**

This instrument is acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2013, by  
Joyce Wilson, as City Manager for the CITY OF EL PASO.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:

My Commission Expires:  
\_\_\_\_\_

**AFTER FILING RETURN TO:**

**EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P.**  
**6500 Montana**  
**El Paso, Texas 79925**

November 30, 2012

Mr. Matthew McElroy  
Deputy Director- City of El Paso  
Planning and Economic  
2 Civic Center Plaza  
City of El Paso  
El Paso, Tx 79901

Dear Mr. McElroy,

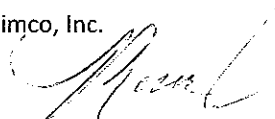
The purpose of this letter is to request a three year extension in the requirement for us to do the renovations and repairs to Boston Street. We have been pursuing the redevelopment of this site and have committed to do the improvements and will do them as soon as the project is built. However, with the projects currently pending, we feel the extension will be necessary and provide an outside date for the completion.

You may ask, "Why haven't we started?" We have attempted three times, however the recession hit and stopped all development activity, so we used that time to commission Perkowitz and Ruth to do a study on the property (at a cost of \$80,000.00) which developed a beautiful plan, but was not feasible. We then engaged a group out of Houston that developed a plan for a condominium/mixed use project that again produced a product that couldn't work in El Paso. Then last year we developed a plan working with City Staff for the entire block, rezoned the property, designed a renovation and two new buildings, applied for permits, and received bids. The bids came in almost 30% over estimates. Then about one month ago, we started getting inquiries from a medical tenant for the whole building and from several developers wanting us to switch gears and do a mixed use/student housing project. These last two options make the most sense for the site and while the student housing will be the most difficult it is the one we are most excited about. If we can get it done, it will be an 18-24 month construction project with about six months of due diligence, design, and permitting, thus the request for the additional time.

We are only trying to make the Boston renovations part of the construction of whatever we end up building, and we will do them as part of the whole project as soon as possible, in the mean time, we will continue to allow public use of the street for parking and access.

We sincerely appreciate your consideration of this request and if you have any questions regarding this, please feel free to call me.

Sincerely,  
Mimco, Inc.



Robert S. Ayoub  
President

ORDINANCE NO. 017764

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**AN ORDINANCE AMENDING ORDINANCE NO. 017524 WHICH AMENDED  
ORDINANCE NO. 017109 WHICH VACATED A PORTION OF BOSTON AVENUE, TO  
ALLOW ANOTHER ONE YEAR EXTENSION TO COMPLETE IMPROVEMENTS ON  
THE PEDESTRIAN WALKWAY AND TO REVISE THE QUITCLAIM DEED TO  
REFLECT THE EXTENDED TIME FOR COMPLETION.**

**WHEREAS**, on April 14, 2009 the City Council of El Paso passed an ordinance vacating a portion of Boston Avenue, Alexander Addition, City of El Paso, El Paso County, Texas, and conveying the vacated portion to **EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P.**; and,

**WHEREAS**, one of the conditions placed on the vacation of the land was that EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. would construct a 15-foot wide pedestrian walkway traversing the subject property from Oregon St. to Mesa St, to be landscaped and able to accommodate bicyclists, built to City standards, including ADA requirements, and consist of plants selected from the approved plant list on file and maintained in the development services department; and,

**WHEREAS**, the above improvements were to be completed within two years from the date the vacation was approved by City Council or the property would revert back to the City of El Paso; and,

**WHEREAS**, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P was unable to complete the improvements within the two years and requested a one year extension and the City on April 5, 2011, granted such extension for additional consideration; and,

**WHEREAS**, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P is still unable to complete the improvements and wishes to request an additional one year extension and in exchange for the one year extension the street will remain open for public vehicular use;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

1. That in consideration for adding another additional year to complete the required pedestrian walkway improvements, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. will continue to keep the street open for public use for both vehicular and pedestrian traffic until such time that the construction of the required pedestrian walkway improvements begins; and,

2. That once the construction of the required improvements begins, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P shall have six months to complete the required pedestrian walkway improvements, provided, however, that the city manager may grant a three month extension; and,

3. That the El Paso City Council has determined that the additional consideration provided by EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P is adequate consideration for amending Ordinance No. 017109, Ordinance No. 017524 and the Quitclaim Deed to grant the one year extension to complete the pedestrian walkway improvements; and,

CITY CLERK DEPT.  
2012 MAR 15 AM 10:39



4. That the conditions contained in Ordinance No. 017109, Ordinance No. 017524 and the Quitclaim Deed dated April 14, 2009, Document # 20090026473 and the Quitclaim Deed dated April 5, 2011, Document # 20110025985, be amended as follows:

A one year extension is granted for the completion of the improvements to the pedestrian walkways so that the improvements shall be completed within four years of April 14, 2009 or the City, at its discretion, if and only if the improvements are not completed by April 14, 2013, may require the property owner to dedicate back to the City of El Paso, the interest conveyed by this deed and, if requested by the City of El Paso upon the dedication back to the City, remove any improvements. Should the property revert back to the City, the City shall not be required to compensate EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P for the costs of any improvements completed.

5. The street shall remain open to both vehicular and pedestrian traffic until such time that the construction of the required pedestrian walkway improvements begins. Once the construction of the required improvements begins, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P shall have six months to complete the required pedestrian walkway improvements, provided, however, that the city manager may grant a three month extension; and,

6. In addition, the City Manager is authorized to sign an instrument amending the quitclaim deed to include the amended conditions.

Except as hereby expressly amended, all conditions and requirements stated in Ordinance No. 017109 and Ordinance No. 017524 shall remain in full force and effect.

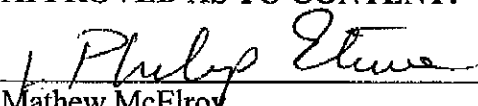
PASSED AND APPROVED this 3<sup>rd</sup> day of April, 2012.

THE CITY OF EL PASO

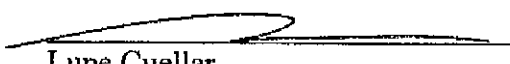
  
John F. Cook, Mayor

  
  
Richarda Duffy-Mommsen  
City Clerk

APPROVED AS TO CONTENT:

  
Mathew McElroy,  
Deputy Director  
Planning & Economic Development

APPROVED AS TO FORM:

  
Lupe Cuellar  
Assistant City Attorney

ORDINANCE NO. 017764

61

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THE STATE OF TEXAS }  
 }  
 COUNTY OF EL PASO }

**SECOND AMENDED QUITCLAIM DEED**

This quitclaim deed amends the quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 21, 2009, Document # 20090026473 and the first amended quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 15, 2011, Document # 20110025985, in which the city, in consideration of the receipt by the **CITY OF EL PASO** of TWENTY-FIVE DOLLARS (\$25.00) and other valuable consideration, released and quitclaimed unto EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. (Collectively, the "Grantee"), El Paso, El Paso County, an undivided 50% interest to each Grantee, all its rights, title interest, claim and demand in and to the property which was vacated, closed and abandoned by Ordinance No. 017109, passed and approved by the City Council of the City of El Paso on April 14, 2009, and described as **A PORTION OF BOSTON AVENUE, ALEXANDER ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS**, which is more fully described in the attached metes and bounds description, identified as Exhibit "A" and in the attached survey identified as Exhibit "B."

The conditions contained in the original quitclaimed deed and in the first amended quitclaim deed are amended as follows:

A one year extension is granted for the completion of the improvements to the pedestrian walkways so that the improvements shall be completed within four years of April 14, 2009 or the City, at its discretion, if and only if the improvements are not completed by April 14, 2013, may require the property owner to dedicate back to the City of El Paso, the interest conveyed by this deed and, if requested by the City of El Paso upon the dedication back to the City, remove any improvements. Should the property revert back to the City, the City shall not be required to compensate EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. for the costs of any improvements completed.

Except as hereby expressly amended, the quitclaim deed recorded and filed with the official public records of real property in El Paso County on April 21, 2009, Document # 20090026473, and the first amended quitclaim deed recorded and filed with the official public records of real property

CITY CLERK DEPT.  
 2012 MAR 15 AM 10:39

in El Paso County on April 15, 2011, Document # 20110025985, shall remain in full force and effect.

WITNESS the following signatures and seal this 3<sup>rd</sup> day of April, 2012.

CITY OF EL PASO

Joyce Wilson  
Joyce Wilson, City Manager

APPROVED AS TO CONTENT:

Mathew McElroy  
Mathew McElroy, Deputy Director  
Planning & Economic Development Department  
Planning Division

APPROVED AS TO FORM:

Lupe Cuellar  
Lupe Cuellar  
Assistant City Attorney

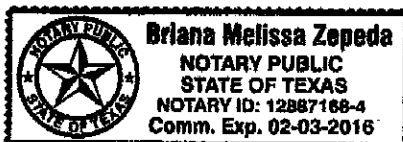
**ACKNOWLEDGMENT**

THE STATE OF TEXAS   )  
COUNTY OF EL PASO   )

This instrument is acknowledged before me on this 3<sup>rd</sup> day of April, 2012, by  
Joyce Wilson, as City Manager for the CITY OF EL PASO.

Briana M. Zepeda  
Notary Public, State of Texas  
Notary's Printed or Typed Name:

My Commission Expires:



CITY CLERK DEPT.  
2012 MAR 15 AM 10:39

AFTER FILING RETURN TO:

EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P.  
6500 Montana  
El Paso, Texas 79925

Being a portion of Boston Avenue  
Out of Alexander Addition  
City of El Paso, El Paso County, Texas  
January 17, 2006

## EXHIBIT A

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Boston Avenue out of Alexander Addition  
City of El Paso, El Paso County, Texas and being more particularly described by metes and  
bounds as follows:

Commencing for reference at an existing city monument lying 10 feet northerly and  
10 feet easterly of the centerline intersection of Oregon Street and University Street  
Thence North  $36^{\circ}58'48''$  West a distance 1015.00 feet to a point from which another  
existing city monument lying 10 feet northerly and 10 feet easterly of the centerline  
intersection of Cincinnati Street and Oregon Street bears North  $36^{\circ}58'48''$  West a  
distance of 635.00 feet, Thence leaving said line North  $53^{\circ}01'12''$  East a distance of  
25.00 feet to a set  $\frac{1}{2}$ " rebar with cap marked TX 5152 on the intersection of the  
northwesterly right of way line of Boston Avenue with the northeasterly right of way  
line of Oregon Street for THE "TRUE POINT OF BEGINNING"

Thence along the northwesterly right of way line of Boston Avenue North  $53^{\circ}01'12''$   
East a distance of 260.00 feet to a set chiseled X on concrete on the southwesterly  
right of way line of Mesa Street;

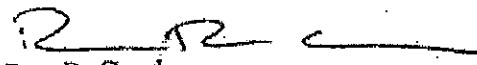
Thence along said right of way line South  $36^{\circ}58'48''$  East a distance of 70.00 feet to a  
found chiseled X on concrete on the southeasterly right of way line of Boston  
Avenue;

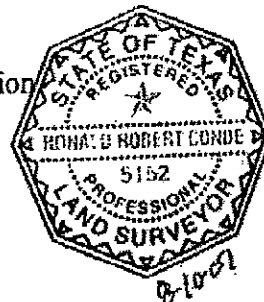
Thence along said right of way line South  $53^{\circ}01'12''$  West a distance of 260.00 feet to  
a found chiseled X on concrete on the northeasterly right of way line of Oregon  
Street;

Thence along said right of way line North  $36^{\circ}58'48''$  West a distance of 70.00 feet to the  
"TRUE POINT OF BEGINNING" and containing 18,200 Square Feet or 0.4178 acres of land  
more or less.

NOTE: Bearings basis is True North for a Transverse Mercator Surface Projection as  
determine by RTK GPS methods

A Plat of even date accompanies this description

  
Ron R. Conde  
R.P.L.S. No. 5152



CONDE, INC.

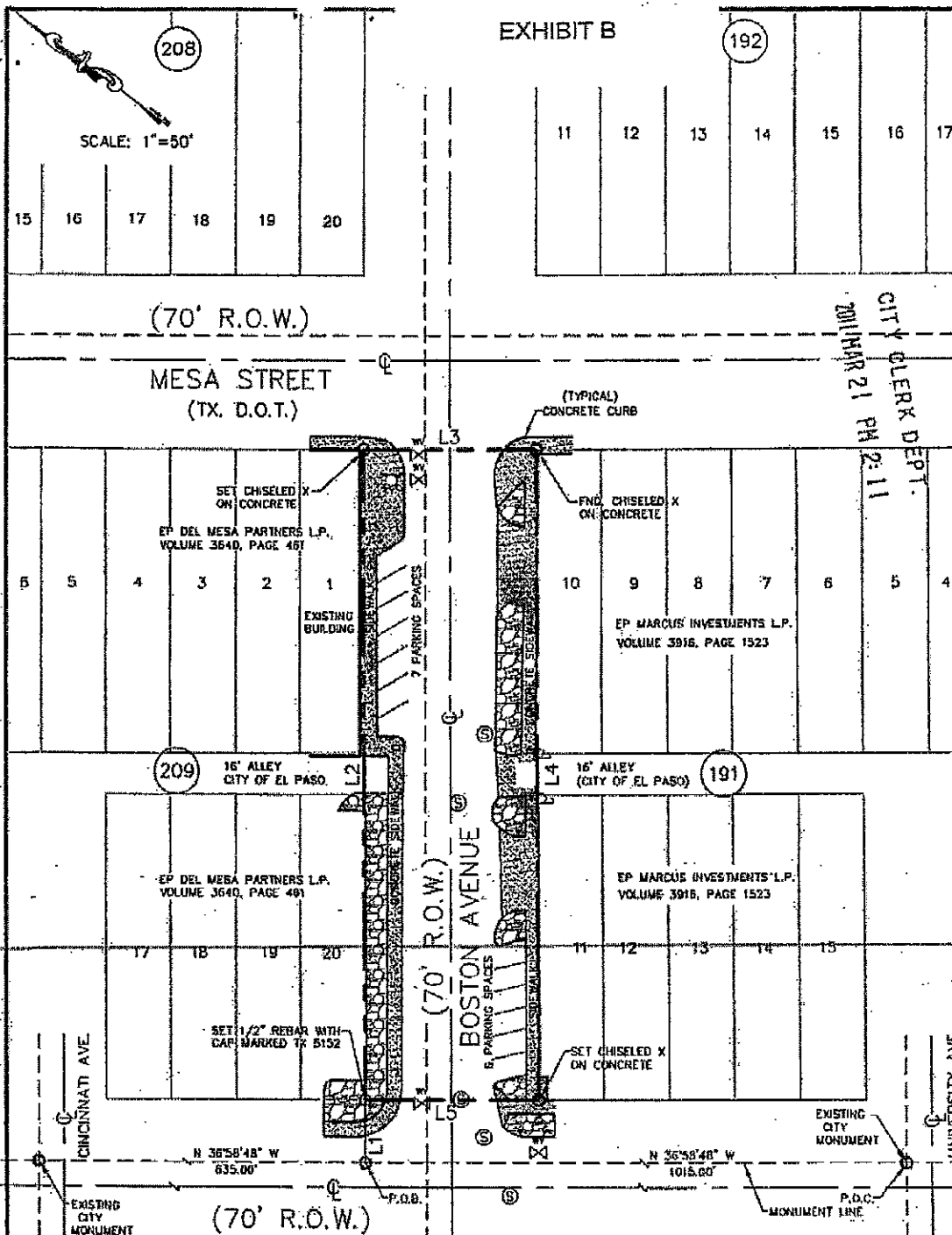
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 893-0887

LGL-05/1105-01

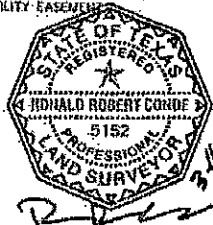
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2011 MAR 21 PM 2:11

HORIZONTAL/VERTICAL  
LINE THROUGH  
DOCUMENT

# EXHIBIT B



NOTES:  
 1. A METES & BOUNDS DESCRIPTION OF EVEN DATE, ACCOMPANIES THIS PLAT.  
 2. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 480214-00398 THIS PROPERTY IS IN FLOOD HAZARD ZONE C.  
 3. RIGHT OF WAY OF BOSTON STREET TO REMAIN A DRAINAGE AND UTILITY EASEMENT.



REVISED 3-11-08 (ADDED ROW NOTE.)

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 ALL RIGHTS RESERVED

## LEGEND

- = ELECTRIC BOX
- ⊕ = FIRE HYDRANT
- ⊙ = POWER POLE
- ⊗ = WATER VALVE
- ⊕ = MANHOLE

## LINE TABLE

LINE	LENGTH	BEARING
L1	25.00	N53°01'12"E
L2	260.00	N53°01'12"E
L3	70.00	S36°58'48"E
L4	260.00	S53°01'12"W
L5	70.00	N36°58'48"W

## SKETCH OF SURVEY

JOB # 1105-01 DATE: JANUARY 17, 2006 FIELD: A.V. OFFICE: M.M.

A PORTION OF BOSTON AVENUE  
 ALEXANDER ADDITION  
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

CONDE ENGINEERING INC.  
 1790 LEE TREVINO SUITE 400  
 EL PASO, TEXAS 79936

CADD FILE: F:\IRON\BOSTON

**HORIZONTAL/VERTICAL  
 LINE THROUGH  
 DOCUMENT**

Doc# 20120025701  
#pages 7 #NPages 0  
4/9/2012 10:16:58 AM  
Filed & Recorded in  
Official Records of  
El Paso County  
Delia Briones  
County Clerk  
Fees \$40.00

SCANNED

I hereby certify that this instrument was filed on the date and time stamp  
hereon by me and was duly recorded by document number in the Official  
Public Records of Real Property in El Paso County.



EL PASO COUNTY, TEXAS

*Delia Briones*

*Please return to Drawer 151*  
**CITY CLERK'S OFFICE**  
2 Civic Center Plaza  
El Paso, TX 79901-1196

ORD. No. 017764

Date of Introduction 3/27/2012

Date of ADOPTION 4/3/2012

City Clerk RICHARDA DUFFY MOMSEN

APR 10

2011 MAR 28 AM 9:18

ORDINANCE NO. 017524

**AN ORDINANCE AMENDING ORDINANCE NO. 017109 WHICH VACATED A PORTION OF BOSTON AVENUE TO ALLOW A ONE YEAR EXTENSION TO COMPLETE IMPROVEMENTS ON THE PEDESTRIAN WALKWAY AND TO REVISE THE QUITCLAIM DEED TO REFLECT THE EXTENDED TIME FOR COMPLETION.**

**WHEREAS**, on April 14, 2009 the City Council of El Paso passed an ordinance vacating a portion of Boston Avenue, Alexander Addition, City of El Paso, El Paso County, Texas, and conveying the vacated portion to **EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P.**; and,

**WHEREAS**, one of the conditions placed on the vacation of the land was that EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. would construct a 15-foot wide pedestrian walkway traversing the subject property from Oregon St. to Mesa St, to be landscaped and able to accommodate bicyclists, built to City standards, including ADA requirements, and consist of plants selected from the approved plant list on file and maintained in the development services department; and,

**WHEREAS**, the above improvements were to be completed within two years from the date the vacation was approved by City Council or the property would revert back to the City of El Paso; and,

**WHEREAS**, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. is unable to complete the improvements within the two years and is requesting a one year extension and is providing additional consideration to the City for granting the extension;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That in consideration of adding an additional year to complete the required pedestrian walkway improvements, EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. will provide for an additional pedestrian walkway and additional landscaping for both pedestrian walkway; and,

That the El Paso City Council has determined that the additional consideration provided by EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. is adequate consideration for amending Ordinance No. 017109 and the Quitclaim Deed to grant the one year extension to complete the pedestrian walkway improvements; and,

That the conditions contained in Ordinance No. 017109 and the Quitclaim Deed be amended as follows:

1. The following pedestrian walkways shall be constructed by EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. All pedestrian walkways shall be built to City standards, including ADA requirements, and be landscaped, and able to accommodate bicyclists. A minimum of 18 canopy trees shall be planted along the interior of each of the pedestrian walkways to include any closure along Oregon. The trees shall be shown in the irrigation plan to be approved by the city prior to installation. Landscaping shall consist of plants selected from the approved plant list on file and maintained in the development services department.

2011 MAR 28 AM 9:18

- a. A 15-foot wide pedestrian walkway be provided that traverses the subject property from Oregon St. to Mesa St.
- b. A 5' wide pedestrian walkway be added to the northern side of the subject property from Oregon Street to Mesa Street.

2. The access to the entire vacated portion shall remain unobstructed for access by the City and utilities shall be given full access to the alleys. The access to the pedestrian walkways shall remain unobstructed.

3. A one year extension is granted for the completion of the improvements to the pedestrian walkways so that the improvements shall be completed within three years of April 14, 2009 or the City, at its discretion, if and only if the improvements are not completed by April 14, 2012, may require the property owner to dedicate back to the City of El Paso, the interest conveyed by this deed and, if requested by the City of El Paso upon the dedication back to the City, remove any improvements. Should the property revert back to the City, the City shall not be required to compensate EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P for the costs of any improvements completed.

4. EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P or their successor in interest, shall maintain the improvements on the pedestrian walkway, or the property reverts back to the City of El Paso.

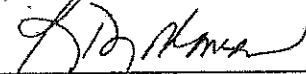
5. That the full length and width of the existing street shall be retained as an easement for utilities and no structures shall be constructed that interfere with existing utility infrastructure and access.

In addition, the City Manager is authorized to sign an instrument amending the quitclaim deed to include the amended conditions.

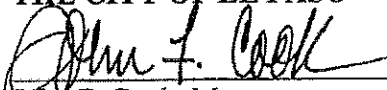
Except as hereby expressly amended, Ordinance No. 017109 shall remain in full force and effect.



ATTEST:

  
Richarda Duffy Momsen  
City Clerk

THE CITY OF EL PASO

  
John F. Cook, Mayor

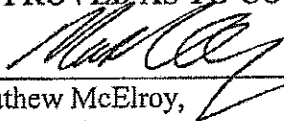
PASSED AND APPROVED this 5<sup>th</sup> day of April, 2011.

SIGNATURES CONTINUE OF FOLLOWING PAGE

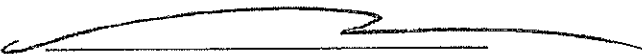
017524



APPROVED AS TO CONTENT:

  
Mathew McElroy,  
Deputy Director  
Planning & Economic Development

APPROVED AS TO FORM:

  
Lupe Cuellar  
Assistant City Attorney

CITY CLERK DEPT.  
2011 MAR 28 AM 9:18

FILED  
MAR 28 2011  
CITY CLERK  
CITY OF LOS ANGELES

FILED

CITY CLERK'S OFFICE

2 Civic Center Plaza

LOS ANGELES, CA 90012-1108

62812 v3 - Ord/amend/Boston vacation/extend time

TX 78901-1108

ORD. No. 67444

Date of Introduction

Date of Adoption

City Clerk - EUGENE MONTGOMERY

017501

2011 MAR 28 AM 9:19

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

THE STATE OF TEXAS }  
COUNTY OF EL PASO }

**AMENDED QUITCLAIM DEED**

This quitclaim deed amends the quitclaim deed recorded on April 21, 2009 at in which the city, in consideration of the receipt by the **CITY OF EL PASO** of TWENTY-FIVE DOLLARS (\$25.00) and other valuable consideration, released and quitclaimed unto EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. (Collectively, the "Grantee"), El Paso, El Paso County, an undivided 50% interest to each Grantee, all its rights, title interest, claim and demand in and to the property which was vacated, closed and abandoned by Ordinance No. 017109, passed and approved by the City Council of the City of El Paso on April 14, 2009, and described as **A PORTION OF BOSTON AVENUE, ALEXANDER ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS**, which is more fully described in the attached metes and bounds description, identified as Exhibit "A" and in the attached survey identified as Exhibit "B".

The conditions contained in the original quitclaimed deed are amended as follows:

1. The following pedestrian walkways shall be constructed by EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. All pedestrian walkways shall be built to City standards, including ADA requirements, and be landscaped, and able to accommodate bicyclists. A minimum of 18 canopy trees shall be planted along the interior of each of the pedestrian walkways to include any closure along Oregon. The trees shall be shown in the irrigation plan to be approved by the city prior to installation. Landscaping shall consist of plants selected from the approved plant list on file and maintained in the development services department.

- a. A 15-foot wide pedestrian walkway be provided that traverses the subject property from Oregon St. to Mesa St.
- b. A 5' wide pedestrian walkway be added to the northern side of the subject property from Oregon Street to Mesa Street.

2. The access to the entire vacated portion shall remain unobstructed for access by the City and utilities shall be given full access to the alleys. The access to the pedestrian walkways shall remain unobstructed.

3. A one year extension is granted for the completion of the improvements to the pedestrian walkways so that the improvements shall be completed within three years of April 14, 2009 or the City, at its discretion, if and only if the improvements are not completed by April 14, 2012, may require the property owner to dedicate back to the City of El Paso, the interest conveyed by this

CITY CLERK DEPT.

2011 MAR 28 AM 9:19

deed and, if requested by the City of El Paso upon the dedication back to the City, remove any improvements. Should the property revert back to the City, the City shall not be required to compensate EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P for the costs of any improvements completed.

4. EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P or their successor in interest, shall maintain the improvements on the pedestrian walkway, or the property reverts back to the City of El Paso.

5. That the full length and width of the existing street shall be retained as an easement for utilities and no structures shall be constructed that interfere with existing utility infrastructure and access.

Except as hereby expressly amended, the quitclaim deed filed on April 21, 2009 shall remain in full force and effect.

WITNESS the following signatures and seal this 5<sup>th</sup> day of April, 2011.

CITY OF EL PASO

Joyce H. Wilson  
Joyce Wilson, City Manager

APPROVED AS TO CONTENT:

Mathew McElroy  
Mathew McElroy, Deputy Director  
Development Services Department  
Planning Division

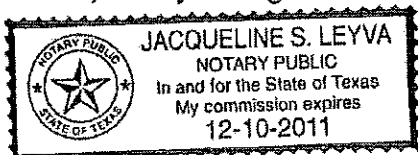
APPROVED AS TO FORM:

Lupe Cuellar  
Lupe Cuellar  
Assistant City Attorney

**ACKNOWLEDGMENT**

THE STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument is acknowledged before me on this 6<sup>th</sup> day of April, 2011, by  
Joyce Wilson, as City Manager for the CITY OF EL PASO.



My Commission Expires:  
12/10/2011

AFTER FILING RETURN TO:

EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P.  
6500 Montana  
El Paso, Texas 79925

Jacqueline S. Leyva  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
Jacqueline S. Leyva

Being a portion of Boston Avenue  
Out of Alexander Addition  
City of El Paso, El Paso County, Texas  
January 17, 2006

## EXHIBIT A

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Boston Avenue out of Alexander Addition City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument lying 10 feet northerly and 10 feet easterly of the centerline intersection of Oregon Street and University Street Thence North  $36^{\circ}58'48''$  West a distance 1015.00 feet to a point from which another existing city monument lying 10 feet northerly and 10 feet easterly of the centerline intersection of Cincinnati Street and Oregon Street bears North  $36^{\circ}58'48''$  West a distance of 635.00 feet, Thence leaving said line North  $53^{\circ}01'12''$  East a distance of 25.00 feet to a set  $\frac{1}{2}$ " rebar with cap marked TX 5152 on the intersection of the northwesterly right of way line of Boston Avenue with the northeasterly right of way line of Oregon Street for THE "TRUE POINT OF BEGINNING"

Thence along the northwesterly right of way line of Boston Avenue North  $53^{\circ}01'12''$  East a distance of 260.00 feet to a set chiseled X on concrete on the southwesterly right of way line of Mesa Street;

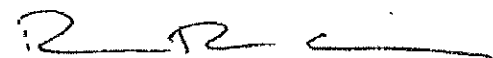
Thence along said right of way line South  $36^{\circ}58'48''$  East a distance of 70.00 feet to a found chiseled X on concrete on the southeasterly right of way line of Boston Avenue;

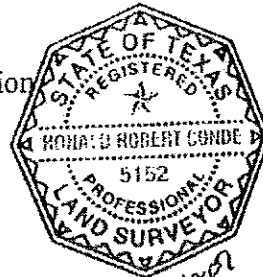
Thence along said right of way line South  $53^{\circ}01'12''$  West a distance of 260.00 feet to a found chiseled X on concrete on the northeasterly right of way line of Oregon Street;

Thence along said right of way line North  $36^{\circ}58'48''$  West a distance of 70.00 feet to the "TRUE POINT OF BEGINNING" and containing 18,200 Square Feet or 0.4178 acres of land more or less.

NOTE: Bearings basis is True North for a Transverse Mercator Surface Projection as determine by RTK GPS methods

A Plat of even date accompanies this description

  
Ron R. Conde  
R.P.L.S. No. 5152



LGL-05/1105-01

CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

CITY CLERK DEPT.  
2011 MAR 21 PM 2:11

# EXHIBIT B

SCALE: 1"=50'

(70' R.O.W.)

MESA STREET  
(TX. D.O.T.)

CITY CLERK DEPT.  
2011 MAR 21 PM 2:11

SET CHISELED X  
ON CONCRETE  
EP DEL MESA PARTNERS L.P.  
VOLUME 3640, PAGE 461

EXISTING BUILDING  
7 PARKING SPACES

(TYPICAL)  
CONCRETE CURB

FND. CHISELED X  
ON CONCRETE

EP MARCUS INVESTMENTS L.P.  
VOLUME 3916, PAGE 1523

16" ALLEY  
CITY OF EL PASO

EP DEL MESA PARTNERS L.P.  
VOLUME 3640, PAGE 461

SET 1/2" REBAR WITH  
CAP MARKED TX 5152

16" ALLEY  
(CITY OF EL PASO)

EP MARCUS INVESTMENTS L.P.  
VOLUME 3916, PAGE 1523

SET CHISELED X  
ON CONCRETE

EXISTING  
CITY MONUMENT

CINCINNATI AVE.

N 36°58'48" W  
635.00'

EXISTING  
CITY MONUMENT

(70' R.O.W.)  
OREGON STREET

BOSTON AVENUE  
(70' R.O.W.)

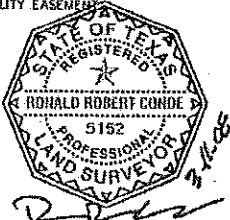
N 36°58'48" W  
1015.00'

P.O.C.  
MONUMENT LINE

UNIVERSITY AVE.

## NOTES:

1. A METES & BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT.
2. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 480214-00399 THIS PROPERTY IS IN FLOOD HAZARD ZONE C.
3. RIGHT OF WAY OF BOSTON STREET TO REMAIN A DRAINAGE AND UTILITY EASEMENT.



REVISED 3-11-08 (ADDED ROW NOTE.)

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## LEGEND

- = ELECTRIC BOX
- ⊗ = FIRE HYDRANT
- = POWER POLE
- ⊕ = WATER VALVE
- ⊙ = MANHOLE

## LINE TABLE

LINE	LENGTH	BEARING
L1	25.00	N53°01'12"E
L2	260.00	N53°01'12"E
L3	70.00	S36°58'48"E
L4	260.00	S53°01'12"W
L5	70.00	N36°58'48"W

## SKETCH OF SURVEY

JOB # 1105-01 DATE: JANUARY 17, 2006 FIELD: A.V. OFFICE: M.M.

A PORTION OF BOSTON AVENUE  
ALEXANDER ADDITION  
CITY OF EL PASO, EL PASO COUNTY, TEXAS

CONDE ENGINEERING INC.  
1790 LEE TREVINO SUITE 400  
EL PASO, TEXAS 79936

CADD FILE: F:\RON\BOSTON

09 MAR 30 AM 11:21

11C

ORDINANCE NO. 017109**AN ORDINANCE VACATING A PORTION OF BOSTON AVENUE, LOCATED BETWEEN MESA STREET AND OREGON STREET, IN THE ALEXANDER ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS**

**WHEREAS**, the abutting property owners have requested vacation of a portion of Boston Avenue, located between Mesa Street and Oregon Street, Alexander Addition, City of El Paso, El Paso County, Texas; and,

**WHEREAS**, after public hearing the City Plan Commission recommended that a portion of Boston Avenue, Alexander Addition, City of El Paso, El Paso County, Texas, should be vacated and the City Council finds that said portion of right-of-way is not needed for public use and should be vacated as recommended;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That a determination has been made that it is in the best interest of the public that a *portion of Boston Avenue, located between Mesa Street and Oregon Street, Alexander Addition, City of El Paso, El Paso County, Texas*, and which is more fully described in the attached metes and bounds description, identified as Exhibit "A" and in the attached survey identified as Exhibit "B" and made a part hereof by reference, be and is hereby vacated subject to the following conditions:

1. That access to the alley remain unobstructed for access by the City and utilities be given full access to the alleys.
2. That a 15-foot wide pedestrian walkway be provided that traverses the subject property from Oregon St. to Mesa St. and shall be landscaped and able to accommodate bicyclists. The walkway shall be built to City standards, including ADA requirements, and landscaping shall consist of plants selected from the approved plant list on file and maintained in the development services department.
3. That the improvements to the pedestrian walkway be completed within two years of the date of approval by the El Paso City Council to vacate the portion of Boston Avenue, or the property reverts back to the City of El Paso.
4. That the full length and width shall be retained as an easement for utilities and no structures shall be constructed that interfere with existing utility infrastructure and access.

In addition, the City Manager is authorized to sign an instrument quitclaiming all of the City's right, title and interest in and to such vacated property to **EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P.**


PASSED AND APPROVED this 14<sup>th</sup> day of April, 2009.

(Signatures on following page)

CITY CLERK DEPT.

09 MAR 30 AM 11:21

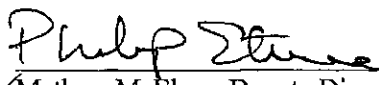
THE CITY OF EL PASO

  
John F. Cook  
Mayor

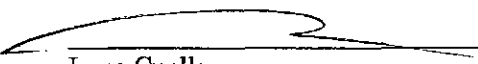
ATTEST:

  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO CONTENT:

  
Mathew McElroy, Deputy Director  
Development Services Department  
Planning Division

APPROVED AS TO FORM:

  
Lupe Cuellar  
Assistant City Attorney

*(Quitclaim Deed on following page)*

POOR QUALITY ORIGINAL  
BEST AVAILABLE IMAGE

*Embossed  
Seal*

Being a portion of Boston Avenue CITY CLERK DEPT.  
Out of Alexander Addition  
City of El Paso, El Paso County, Texas  
January 17, 2006

EXHIBIT A

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Boston Avenue out of Alexander Addition City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument lying 10 feet northerly and 10 feet easterly of the centerline intersection of Oregon Street and University Street Thence North  $36^{\circ}58'48''$  West a distance 1015.00 feet to a point from which another existing city monument lying 10 feet northerly and 10 feet easterly of the centerline intersection of Cincinnati Street and Oregon Street bears North  $36^{\circ}58'48''$  West a distance of 635.00 feet, Thence leaving said line North  $53^{\circ}01'12''$  East a distance of 25.00 feet to a set  $\frac{1}{2}$ " rebar with cap marked TX 5152 on the intersection of the northwesterly right of way line of Boston Avenue with the northeasterly right of way line of Oregon Street for THE "TRUE POINT OF BEGINNING"

Thence along the northwesterly right of way line of Boston Avenue North  $53^{\circ}01'12''$  East a distance of 260.00 feet to a set chiseled X on concrete on the southwesterly right of way line of Mesa Street;

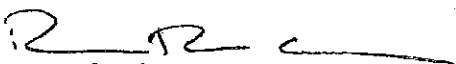
Thence along said right of way line South  $36^{\circ}58'48''$  East a distance of 70.00 feet to a found chiseled X on concrete on the southeasterly right of way line of Boston Avenue;

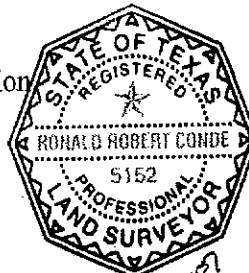
Thence along said right of way line South  $53^{\circ}01'12''$  West a distance of 260.00 feet to a found chiseled X on concrete on the northeasterly right of way line of Oregon Street;

Thence along said right of way line North  $36^{\circ}58'48''$  West a distance of 70.00 feet to the "TRUE POINT OF BEGINNING" and containing 18,200 Square Feet or 0.4178 acres of land more or less.

NOTE: Bearings basis is True North for a Transverse Mercator Surface Projection as determine by RTK GPS methods

A Plat of even date accompanies this description

  
Ron R. Conde  
R.P.L.S. No. 5152



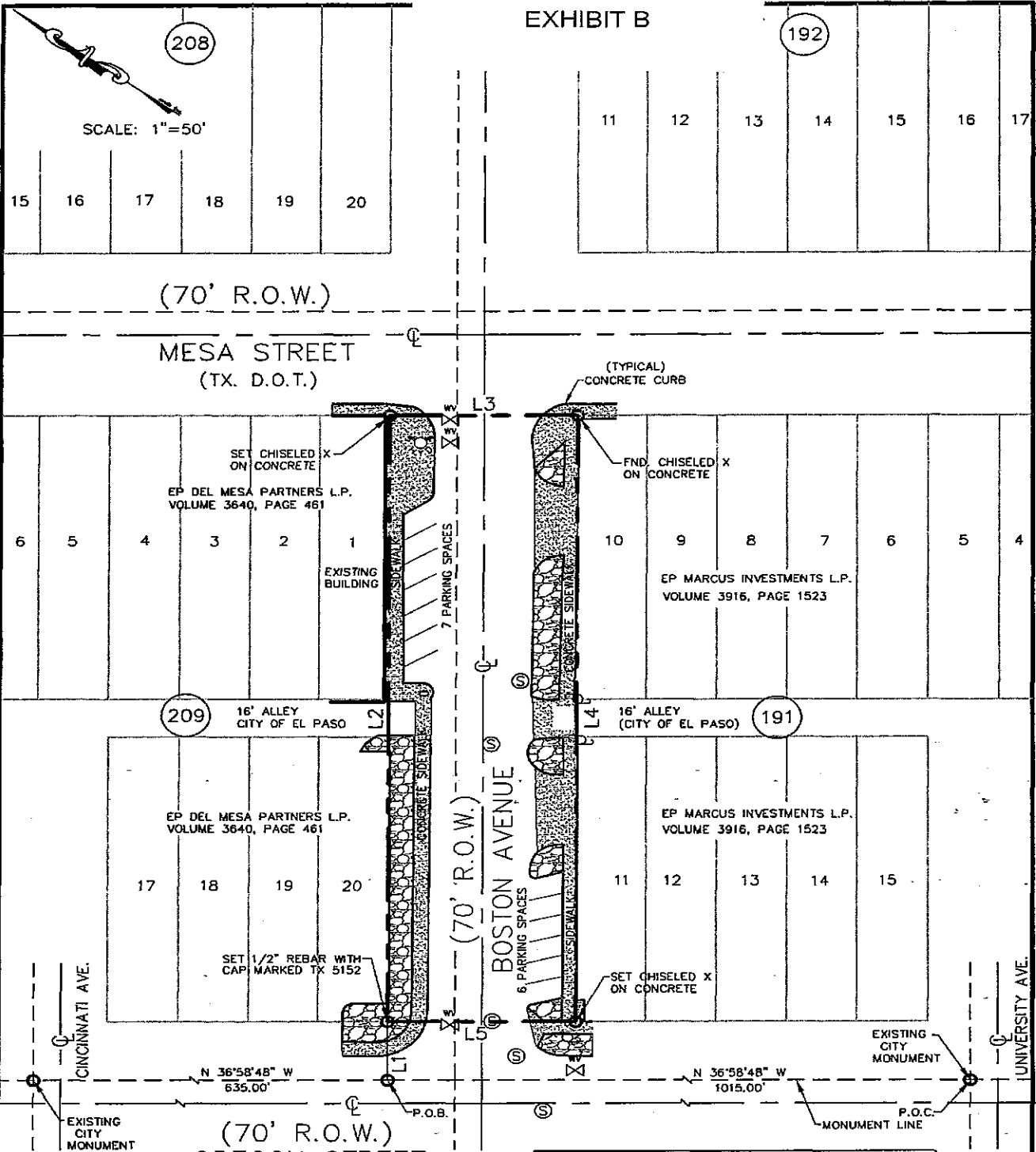
LGL-05/1105-01

CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

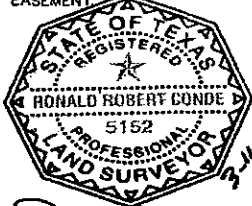
017109



# EXHIBIT B



- NOTES:
1. A METES & BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT.
  2. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 480214-00398 THIS PROPERTY IS IN FLOOD HAZARD ZONE C.
  3. RIGHT OF WAY OF BOSTON STREET TO REMAIN A DRAINAGE AND UTILITY EASEMENT.



REVISED 3-11-08 (ADDED ROW NOTE.)

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ALL RIGHTS RESERVED

## LEGEND

- = = ELECTRIC BOX
- ⊗ = FIRE HYDRANT
- ⊙ = POWER POLE
- ⊗ = WATER VALVE
- ⊙ = MANHOLE

LINE TABLE		
LINE	LENGTH	BEARING
L1	25.00	N53°01'12"E
L2	260.00	N53°01'12"E
L3	70.00	S36°58'48"E
L4	260.00	S53°01'12"W
L5	70.00	N36°58'48"W

## SKETCH OF SURVEY

JOB # 1105-01 DATE: JANUARY 17, 2006 FIELD: A.V. OFFICE: M.M.

A PORTION OF BOSTON AVENUE  
ALEXANDER ADDITION  
CITY OF EL PASO, EL PASO COUNTY, TEXAS

CONDE ENGINEERING INC.  
1790 LEE TREVINO SUITE 400  
EL PASO, TEXAS 79936

CADD FILE: F:\RON\BOSTON

017109

09 MAR 30 AM 11:22

151/9

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

THE STATE OF TEXAS }  
COUNTY OF EL PASO }

**QUITCLAIM DEED**

That in consideration of the receipt by the **CITY OF EL PASO** of TWENTY-FIVE DOLLARS (\$25.00) and other valuable consideration, the sufficiency of which is acknowledged, **THE CITY OF EL PASO**, has released and quitclaimed and by these presents does release and quitclaim unto EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. (Collectively, the "Grantee"), El Paso, El Paso County, an undivided 50% interest to each Grantee, all its rights, title interest, claim and demand in and to the property which was vacated, closed and abandoned by Ordinance No. **017109**, passed and approved by the City Council of the City of El Paso and described as **A PORTION OF BOSTON AVENUE, ALEXANDER ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS**, which is more fully described in the attached metes and bounds description, identified as Exhibit "A" and in the attached survey identified as Exhibit "B" and made a part hereof by reference subject to the following conditions:

1. That access to the alley remain unobstructed for access by the City and utilities be given full access to the alleys.
2. That a 15-foot wide pedestrian walkway be provided that traverses the subject property from Oregon St. to Mesa St. and shall be landscaped and able to accommodate bicyclists. The walkway shall be built to City standards, including ADA requirements, and landscaping shall consist of plants selected from the approved plant list on file and maintained in the development services department.
3. That the improvements to the pedestrian walkway be completed within two years of the date of approval by the El Paso City Council to vacate the portion of Boston Avenue, or the property reverts back to the City of El Paso.
4. That the full length and width shall be retained as an easement for utilities and no structures shall be constructed that interfere with existing utility infrastructure and access.

03 MAR 30 AM 11:22

WITNESS the following signatures and seal this 14<sup>th</sup> day of April, 2009.

CITY OF EL PASO

Joyce Wilson  
Joyce Wilson, City Manager

ATTEST:

Richarda Duffy Momsen  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO CONTENT:

Mathew McElroy  
Mathew McElroy, Deputy Director  
Development Services Department  
Planning Division

APPROVED AS TO FORM:

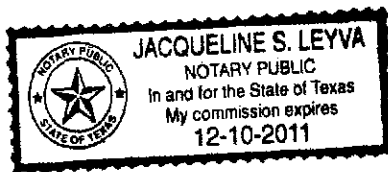
Lupe Cuellar  
Lupe Cuellar  
Assistant City Attorney

ACKNOWLEDGMENT

THE STATE OF TEXAS )

COUNTY OF EL PASO )

This instrument is acknowledged before me on this 15<sup>th</sup> day of April, 2009,  
by Joyce Wilson, as City Manager for the CITY OF EL PASO.



Jacqueline S. Leyva  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
Jacqueline S. Leyva

My Commission Expires:

12/10/2011  
AFTER FILING RETURN TO:

EP Marcus, Investments, L.P. and EP Del Mesa Partners, L.P.  
6500 Montana  
El Paso, Texas 79925

Being a portion of Boston Avenue CITY CLERK DEPT.  
Out of Alexander Addition  
City of El Paso, El Paso County, Texas  
January 17, 2006

EXHIBIT A

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Boston Avenue out of Alexander Addition City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument lying 10 feet northerly and 10 feet easterly of the centerline intersection of Oregon Street and University Street Thence North  $36^{\circ}58'48''$  West a distance 1015.00 feet to a point from which another existing city monument lying 10 feet northerly and 10 feet easterly of the centerline intersection of Cincinnati Street and Oregon Street bears North  $36^{\circ}58'48''$  West a distance of 635.00 feet, Thence leaving said line North  $53^{\circ}01'12''$  East a distance of 25.00 feet to a set  $\frac{1}{2}$ " rebar with cap marked TX 5152 on the intersection of the northwesterly right of way line of Boston Avenue with the northeasterly right of way line of Oregon Street for THE "TRUE POINT OF BEGINNING"

Thence along the northwesterly right of way line of Boston Avenue North  $53^{\circ}01'12''$  East a distance of 260.00 feet to a set chiseled X on concrete on the southwesterly right of way line of Mesa Street;

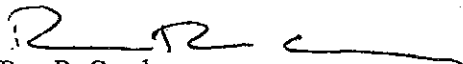
Thence along said right of way line South  $36^{\circ}58'48''$  East a distance of 70.00 feet to a found chiseled X on concrete on the southeasterly right of way line of Boston Avenue;

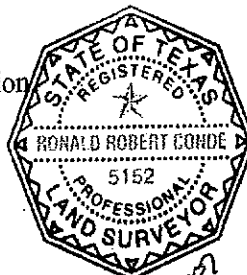
Thence along said right of way line South  $53^{\circ}01'12''$  West a distance of 260.00 feet to a found chiseled X on concrete on the northeasterly right of way line of Oregon Street;

Thence along said right of way line North  $36^{\circ}58'48''$  West a distance of 70.00 feet to the "TRUE POINT OF BEGINNING" and containing 18,200 Square Feet or 0.4178 acres of land more or less.

NOTE: Bearings basis is True North for a Transverse Mercator Surface Projection as determine by RTK GPS methods

A Plat of even date accompanies this description

  
Ron R. Conde  
R.P.L.S. No. 5152

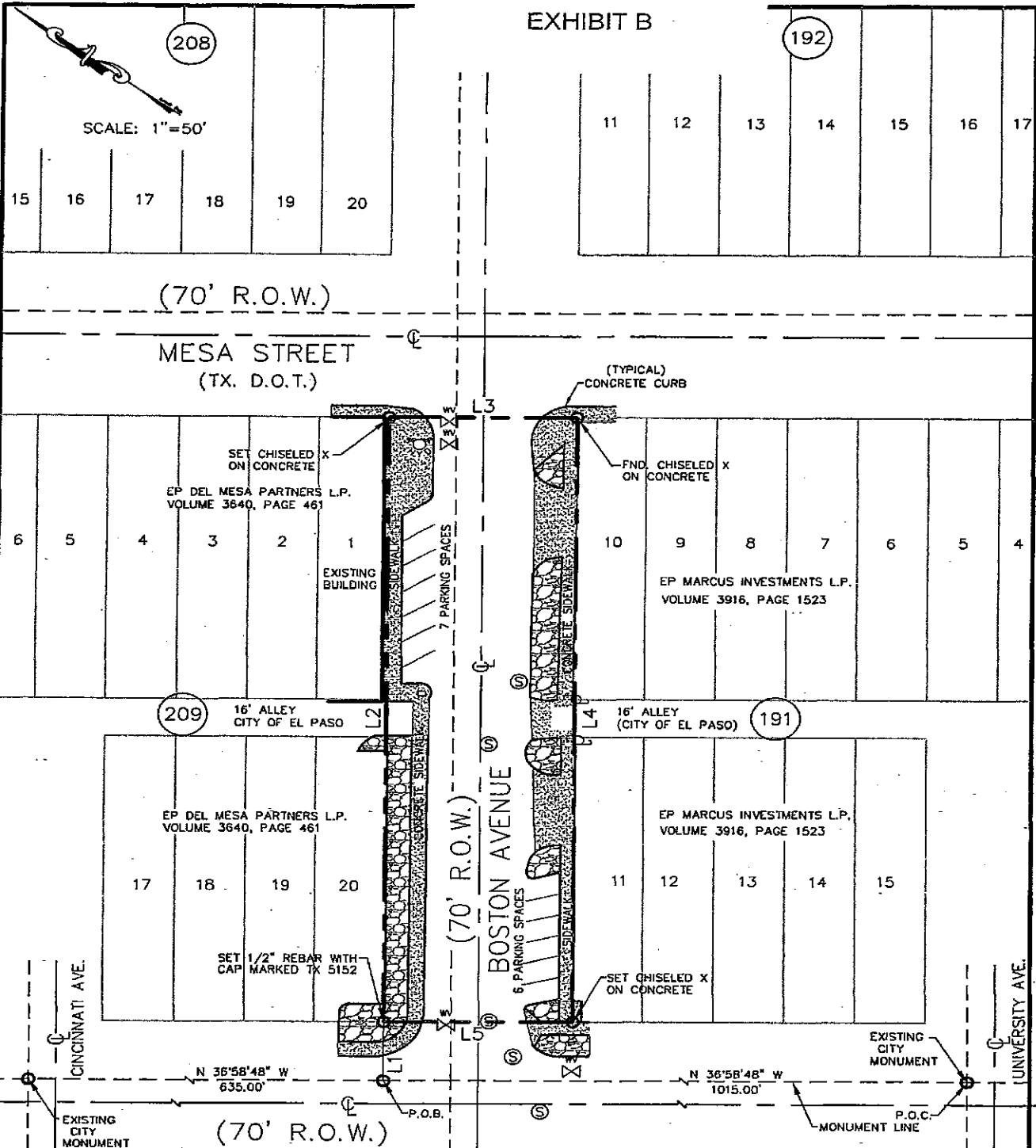


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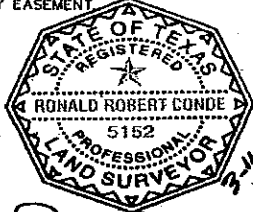
CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

017109

# EXHIBIT B



- NOTES:
1. A METES & BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT.
  2. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP 'COMMUNITY PANEL NO. 480214-00398 THIS PROPERTY IS IN FLOOD HAZARD ZONE C.
  3. RIGHT OF WAY OF BOSTON STREET TO REMAIN A DRAINAGE AND UTILITY EASEMENT



REVISED 3-11-08 (ADDED ROW NOTE.)  
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## LEGEND

- = ELECTRIC BOX
- ⊗ = FIRE HYDRANT
- ⊕ = POWER POLE
- ⊗ = WATER VALVE
- ⊙ = MANHOLE

LINE TABLE		
LINE	LENGTH	BEARING
L1	25.00	N53°01'12"E
L2	260.00	N53°01'12"E
L3	70.00	S36°58'48"E
L4	260.00	S53°01'12"W
L5	70.00	N36°58'48"W

## SKETCH OF SURVEY

JOB # 1105-01 DATE: JANUARY 17, 2006 FIELD: A.V. OFFICE: M.M.

A PORTION OF BOSTON AVENUE  
ALEXANDER ADDITION  
CITY OF EL PASO, EL PASO COUNTY, TEXAS

CONDE ENGINEERING INC.  
1790 LEE TREVINO SUITE 400  
EL PASO, TEXAS 79936

CADD FILE: F:\RON\BOSTON

017109

*Dedicated to Outstanding Customer Service for a Better Community*

**SERVICE SOLUTIONS SUCCESS**



**CITY OF EL PASO, TEXAS  
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Development Services Department  
**AGENDA DATE:** CCA Intro 04/07/09; Public Hearing 04/14/09  
**CONTACT PERSON/PHONE:** Raul Garcia, Planner – 541-4935  
**DISTRICT(S) AFFECTED:** 1

**SUBJECT:**

An Ordinance vacating a portion of Boston Avenue, located between Mesa Street and Oregon Street, in the Alexander Addition, City of El Paso, El Paso County, Texas. Applicant: EP Marcus Investments, L.P. and EP Del Mesa Partners, L.P. Subject Property: East of Oregon Street and West of Mesa Street. (DISTRICT 1)

**BACKGROUND / DISCUSSION:**

See attached report.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) – Approval Recommendation  
City Plan Commission (CPC) – Unanimous Approval Recommendation

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) N/A

**FINANCE:** (if required) N/A

**DEPARTMENT HEAD:** Victor Q. Torres  
Director, Development Services

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Mayor  
John F. Cook

City Council

District 1  
Ann Morgan Lilly

District 2  
Susannah M. Byrd

District 3  
Emma Acosta

District 4  
Melina Castro

District 5  
Rachel Quintana

District 6  
Eddie Holguin Jr.

District 7  
Steve Ortega

District 8  
Beto O'Rourke

City Manager  
Joyce A. Wilson

**Development Services Department**

Victor Q. Torres - Director

2 Civic Center Plaza – 5<sup>th</sup> Floor · El Paso, Texas 79901 · (915) 541-4622 · Fax (915) 541-4799



**MEMORANDUM**

**DATE:** March 26, 2009

**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager

**FROM:** Raul Garcia, Planner

**SUBJECT:** SUB08-00034

The City Plan Commission (CPC), on April 10, 2008, **voted 6-0** to **approve** the Boston Avenue Vacation subject to the following conditions:

1. That access to the alley remain unobstructed for access by the City and utilities be given full access to the alleys.
2. That a 15-foot wide pedestrian walkway be provided that traverses the subject property from Oregon St. to Mesa St. and shall be landscaped and able to accommodate bicyclists. The walkway shall be built to City standards, including ADA requirements, and landscaping shall consist of plants selected from the approved plant list on file and maintained in the development services department.
3. That the improvements to the pedestrian walkway be completed within two years of the date of approval by the El Paso City Council to vacate the portion of Boston Avenue, or the property reverts back to the City of El Paso.
4. That the full length and width shall be retained as an easement for utilities and no structures shall be constructed that interfere with existing utility infrastructure and access.

The CPC determined the vacation is in conformance with The Plan for El Paso and the proposed use is in conformance with the Year 2025 Projected General Land Use Map. The CPC also determined the vacation protects the best interest, health, safety and welfare of the public in general; and the proposed use is compatible with adjacent land uses; and the vacation will have no negative effect on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

Mayor  
John F. Cook

City Council

*District 1*  
Ann Morgan Lilly

*District 2*  
Susannah M. Byrd

*District 3*  
Emma Acosta

*District 4*  
Melina Castro

*District 5*  
Rachel Quintana

*District 6*  
Eddie Holguin Jr.

*District 7*  
Steve Ortega

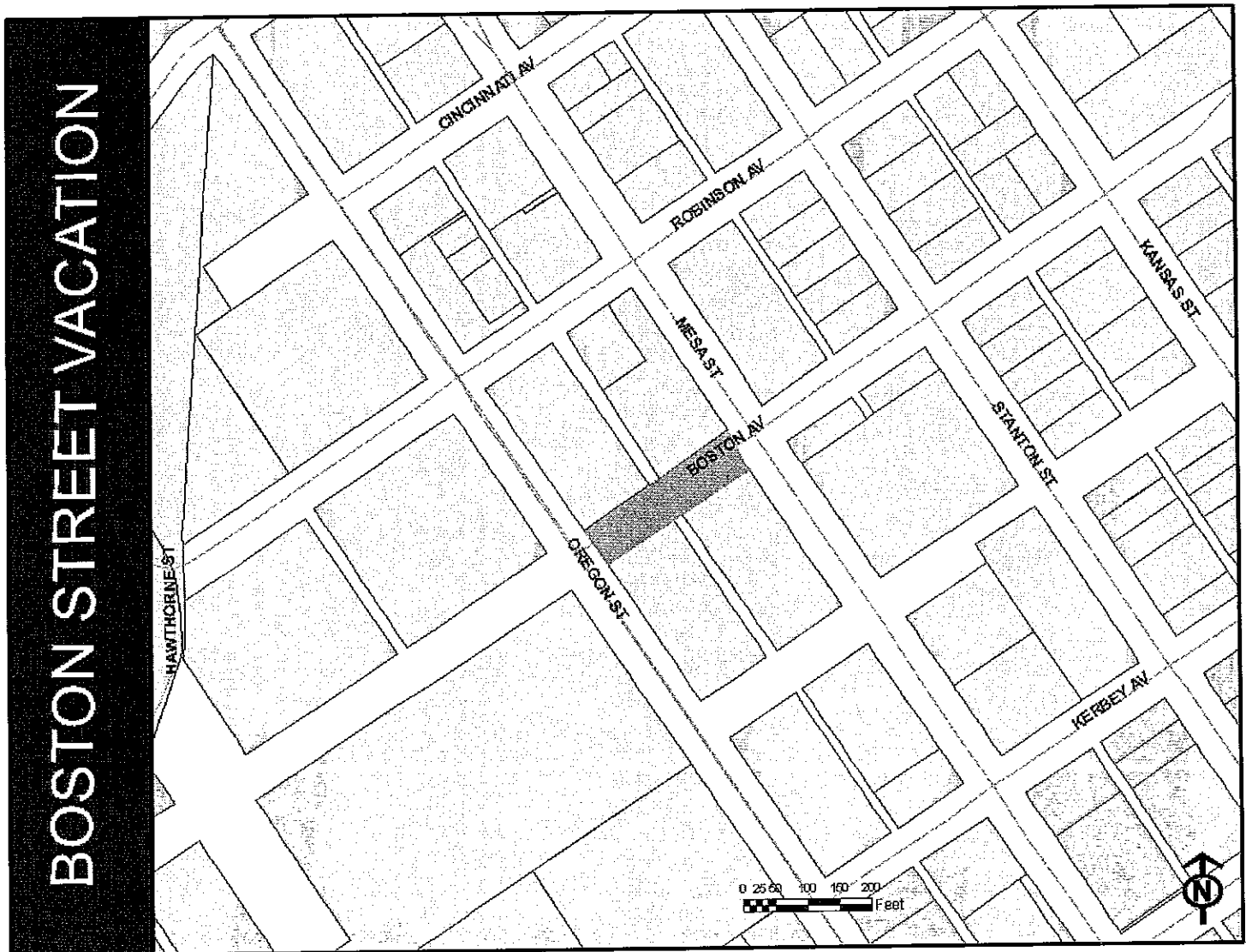
*District 8*  
Beto O'Rourke

City Manager  
Joyce A. Wilson



**SUB08-00034**

<b>Subdivision Name:</b>	Boston Avenue Vacation	
<b>Type Request:</b>	Right of Way Vacation	
<b>Property Owner:</b>	City of El Paso	
<b>Representative:</b>	EP Marcus and EP Del Mesa Partners, L.P.	
<b>Surveyor:</b>	Conde, Inc.	
<b>Location:</b>	East of Oregon Street and West of Mesa Street	
<b>Acres:</b>	0.418	<b>Representative District:</b> 1
<b>Planning Area:</b>	Central	<b>Present Zone:</b> C-1, A-O/sp, C-1/c





### **GENERAL INFORMATION:**

The applicants are proposing to vacate a portion of Boston Avenue located between Mesa Street and Oregon Street. The applicants own the abutting properties to the north and south of the portion being vacated and the request is being made in order to create a parking lot and expand the building area.

The property is currently zoned C-1, A-O/sp, and C-1/c. The special permit on the A-O zoned portion (approved April 27, 1993) allows for off-site, off-street parking for a restaurant/bar on Lots 11-20, Block 208, Alexander Addition. The condition on the C-1 zoned portion (approved May 16, 1995) requires the owner to coordinate and obtain approval from Traffic Engineering and TXDOT on the driveway design and location onto Mesa Street prior to issuance of any building permits.

### **CASE HISTORY:**

This request was presented to the City Plan Commission on March 16, 2006 with the following conditions:

1. That driveway access be provided via Oregon St. and Mesa St as per code requirements.
2. That the alleys in Block 191 and Block 209 be unobstructed; and that the City and utilities be given full access to the alleys.
3. That a 15-foot pedestrian mall be provided that traverses the subject property from Oregon St. to Mesa St. and shall be landscaped and accommodate bicyclists, and;
4. That the improvements to the pedestrian mall be completed within three years of the date of approval by the El Paso City Council to vacate the portion of Boston Ave, or the property reverts back to the City of El Paso.
5. The full length and width retained as an easement for utilities and no structures shall be constructed that interfere with existing utility infrastructure and access.

The City Plan Commission denied this request (5-0) based on the following:

1. The applicant did not agree to provide the 15-foot pedestrian mall.
2. The applicant did not agree with three-year time limit to complete the improvements to the pedestrian mall (condition #4). The applicant did not want to be tied down to any time limit.
3. Potential access issues and future congestion.
4. Not in the best interest of the public.

The applicant then appealed to the City Council where it was denied on May 2, 2006 (6-1).

### **CURRENT REQUEST:**

The applicant has re-submitted this right-of-way vacation request as it has been more than 12 months since it was denied by the City Council.

### **STAFF RECOMMENDATION:**

The Development Coordinating Committee recommends **denial** of the proposed vacation of the portion of Boston Avenue because the applicant does not agree to the proposed conditions. The proposed conditions and requirements are:

1. That driveway access be provided via Oregon St. only and vehicular access to the existing commercial driveways and to the alley from Boston Avenue shall be preserved.
2. That the alley be unobstructed and the City and utilities be given full access to the alleys.
3. That a 15-foot wide pedestrian walkway be provided that traverses the subject property from Oregon St. to Mesa St. and shall be landscaped and accommodate bicyclists. The walkway shall be built to City standards, including ADA compliant, and landscaping shall consist of plants selected from the approved plant list on file and maintained in the development services department.
4. That the improvements to the pedestrian walkway be completed within two years of the date of approval by the El Paso City Council to vacate the portion of Boston Avenue, or the property reverts back to the City of El Paso.

5. The full length and width shall be retained as an easement for utilities and no structures shall be constructed that interfere with existing utility infrastructure and access.

The following comments were received:

**Planning Division – Land Development**

No objections.

**Engineering Department – Traffic Division**

Traffic does not object to this vacation if the following conditions are met:

1. Pedestrian access/sidewalks from Mesa to Oregon shall be maintained.
2. Vehicular access to the existing commercial driveways and to the alley from Boston Ave. shall be preserved.

**Sun Metro**

1. All vehicular traffic shall ingress and egress from the Oregon St. Side.
2. All deliveries shall be from the Oregon St. side.
3. No parking shall be allowed on Mesa St. adjacent to the building.
4. A 15' pedestrian access shall be maintained for thru access and connectivity from Mesa and Oregon streets.

**TXDOT**

TxDOT supports the City of El Paso in regards to closing the Boston Avenue connection onto SH 20 (Mesa).

**El Paso Water Utilities**

EPWU- PSB does not object to this request.

The El Paso Water Utilities does not object to the proposed vacation contingent on the public right-of-way being assigned as an easement and the existing water and sanitary sewer mains as described below remain in place to continue providing service to the public.

**Water**

Along Boston Avenue between Oregon Street and Mesa Street there is an existing six (6) inch diameter water main.

Along the alley located between Oregon Street and Mesa Street, north of Boston Avenue there is an existing one (1) inch diameter water line. This water line dead-ends at approximately 120 feet north of Boston Avenue. This main is fed by the above-described main located along Boston Street.

Along the alley located between Oregon Street and Mesa Street, south of Boston Avenue there is an existing four (4) inch diameter water main. This main dead-ends at approximately 250 feet south of Boston Avenue. This main is fed by the above described main located along Boston Street.

The above described existing 6-inch diameter water main is required to remain active to provide service to several water meters located along the alleys north and south of Boston Avenue.

**Sanitary Sewer**

Along the alley located between Oregon Street and Mesa Street, north of Boston Avenue there is an existing eighteen (18) inch diameter sanitary sewer main. The alignment of this main continues along Boston Avenue towards the west (towards Oregon Street). At Oregon Street, the alignment of this main continues towards the south along Oregon Street.

Along Boston Avenue, between Mesa Street and the alley located west of Mesa Street, there are no existing sanitary sewer mains.

The described existing eighteen (18) inch diameter sanitary sewer main is required to remain active.

**General:**

The existing Boston Avenue public right-of-way to be vacated is required to be designated as a full-width utility easement in order to enable for the described existing water and sanitary sewer mains to remain in place and in operation.

Mesa Street is a Texas Department of Transportation (TxDOT) right-of-way. All proposed water and sanitary sewer work to be performed within Mesa Street right-of-way requires written permission from TxDOT.

Easement grantor shall indemnify, defend, and hold harmless the El Paso Water Utilities – Public Service Board from and against any and all claims, liability, actions, and damages for bodily injury and property damage to third parties or to the El Paso Water Utilities – Public Service Board which may be caused by or arise out of the maintenance and existence of said sanitary sewer main in the easement area.

EPWU-PSB requires access to the proposed water, sanitary sewer facilities, appurtenances, and meters 24 hours a day, seven (7) days a week.

No building, reservoir, structure or other improvement, other than asphaltic paving (HMAC), shall be constructed or maintained on the above referenced El Paso Water Utilities - Public Service Board Easements (EPWU-PSB easements) without the written consent of EPWU-PSB.

The EPWU-PSB easement shall be improved to allow the operation of EPWU maintenance vehicles.

In the event that the City of El Paso Fire Department requires additional fire hydrants on Public right-of-way and/or an on-site fire protection system within the private property, the property owner is responsible for all costs incurred to extend, relocate and construct water mains and appurtenances to provide this service. The owner is responsible for the costs of any necessary on-site & off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

If street improvements are required in conjunction to the right-of-way vacation process, the El Paso Water Utilities requires a finalized set of improvement plans including drainage and grading plans for review and approval prior to any work to ascertain that the proposed improvements do not impact the described existing water and sanitary sewer mains.

EPWU requires a new service application to initialize design of the water and sanitary sewer main extensions to serve the subject property. New service applications are available at 1154 Hawkins, 3<sup>rd</sup> Floor. The following items are required at the time of application: (1) hard copy of subdivision plat; (2) finalized set of street improvement plans, including storm sewer; (3) digital copy of subdivision plat; (4) benchmark check; and (5) construction schedule. Service will be provided in accordance with the current EPWU – PSB Rules and Regulations. The owner is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

**Central Appraisal District**

No comments received.

**Texas Gas Service**

No comments received.

**Fire Department**

No comments received.

**Parks and Recreation Department**

No comments received.

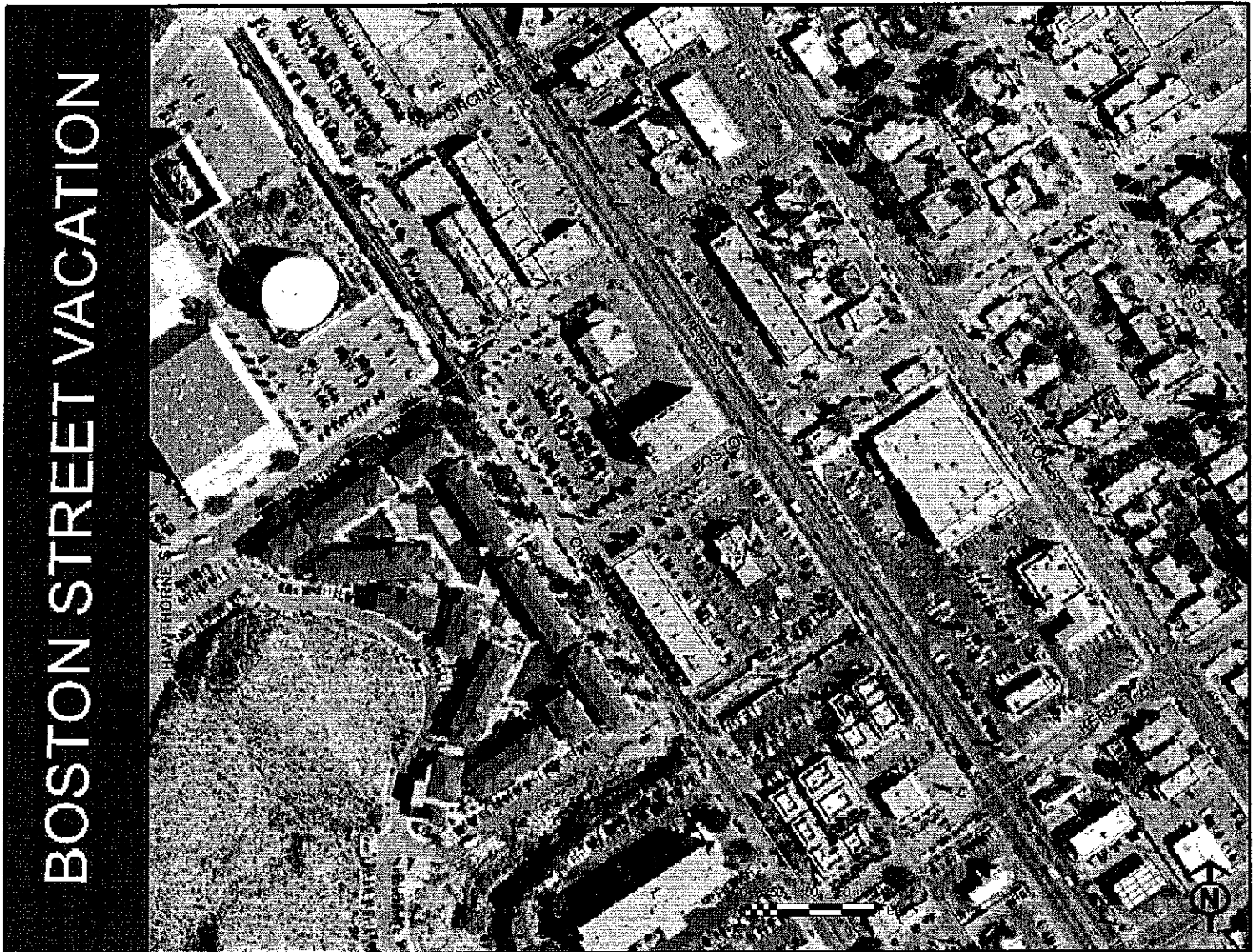
List of Attachments

Attachment 1: Aerial

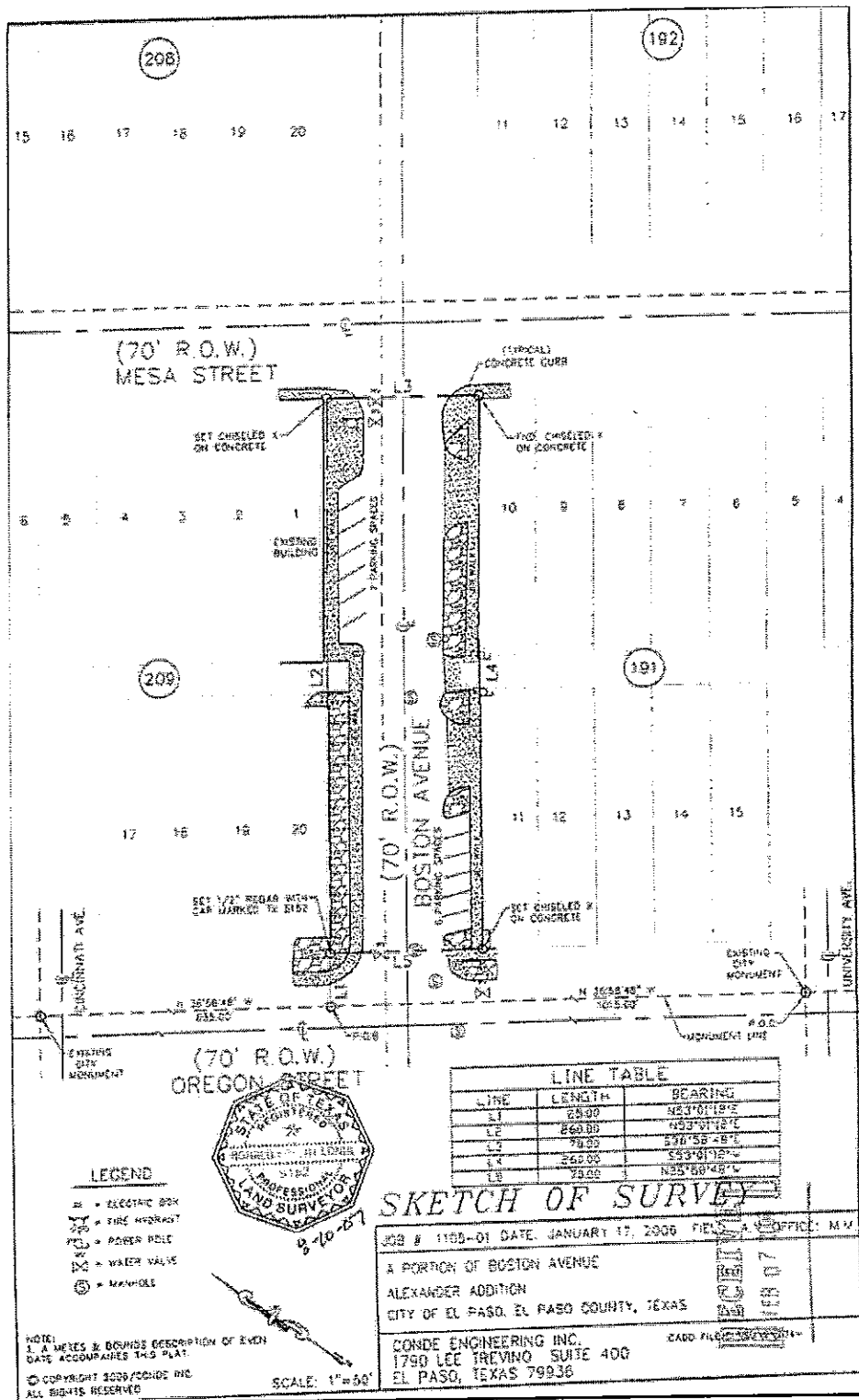
Attachment 2: Survey

Attachment 3: Application

ATTACHMENT 1



# ATTACHMENT 2



# ATTACHMENT 3

## APPLICATION FOR VACATION OF PUBLIC EASEMENTS AND RIGHTS-OF-WAY

SUB08-00034

DATE: August 07, 2007

1. APPLICANTS NAME EP Marcus, L.P. / EP Del Mesa Partners, L.P.

ADDRESS 6509 Montana ZIP CODE 79925 TELEPHONE 779

2. Request is hereby made to vacate the following: (check one) Street ☒ Alley ☐ Easement ☐

Street Name(s) Boston Avenue Subdivision Name Alexander Addition

Abutting Blocks 191/209 Abutting Lots 1-20 / 1-20

3. Reason for the vacation request: To allow for a Parking Lot

4. Surface Improvements located in subject right-of-way:

None ☐ Paving ☒ Curb & Gutter ☒ Power Lines/Poles ☒ Fences/Walls ☐ Structures ☐ Other ☐

5. Underground Improvements located in subject right-of-way:

None ☐ Telephone ☒ Electric ☒ Gas ☒ Water ☒ Sewer ☒ Storm Drain ☐ Other ☐

6. Future Use of the vacated right-of-way:

Yards ☐ Parking ☒ Expand Building Area ☒ Replat with abutting Land ☐ Other ☐

7. Related Application which are pending (give name or file number):

Zoning ☐ Zoning Board of adjustment ☐ Subdivision ☐ Building Permits ☐ Other ☐

8. Signatures: All owners of properties which abut the property to be dedicated must appear below with an adequate legal description of the properties they own (use additional paper if necessary).

Signature	Legal Description/Address	Telephone Numbers
<u>[Signature]</u>	<u>Being a portion of Boston Street out of</u>	<u>779-6309</u>
	<u>Alexander Addition, City of El Paso,</u>	
	<u>El Paso, County, Texas</u>	

The undersigned Owner/Applicant/Agent understands that the processing of this Application will be handled in accordance with the procedure for Requesting Vacations and that no action on processing will be taken without payment of the nonrefundable processing fee. It is further understood that acceptance of this application and fee in no way obligates the City to grant the Vacation. I/We further understand that the fee, if the Vacation is granted, will be determined by the City of El Paso and Certified or Cashier's Check must be presented before the request will be recommended for Council action.

The undersigned acknowledges that he is authorized to represent the property owner(s), and upon the City's request will provide evidence satisfactory to the City confirming these representations.

The granting of a vacation request shall not be construed to be a waiver of or an approval of any violation of any of the provisions of any applicable City ordinances.

### FEE AMOUNT

Easement Vacation \$300.00

☒ Street, Alley, Other Rights-of-way Vacation \$571.00

### CASHIER'S VALIDATION

Signed By:

[Signature]  
Land Owner/Applicant/Agent

Date

FILE NO. \_\_\_\_\_



**CITY PLAN COMMISSION APPLICATION FOR  
LAND STUDY APPROVAL**

DATE: \_\_\_\_\_

FILE NO. \_\_\_\_\_

SUBDIVISION NAME: \_\_\_\_\_

1. Legal description for the area included on this plat (Tract, Block, Grant, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Property Land Uses:

	<u>ACRES</u>	<u>SITES</u>		<u>ACRES</u>	<u>SITES</u>
Single-family	_____	_____	Office	_____	_____
Duplex	_____	_____	Street & Alley	_____	_____
Apartment	_____	_____	Ponding & Drainage	_____	_____
Mobile Home	_____	_____	Institutional	_____	_____
P.U.D.	_____	_____	Other (specify below)	_____	_____
Park	_____	_____	_____	_____	_____
School	_____	_____	_____	_____	_____
Commercial	_____	_____	Total No. Sites	_____	_____
Industrial	_____	_____	Total (Gross) Acreage	_____	_____

3. What is existing zoning of the above described property? \_\_\_\_\_ Proposed zoning? \_\_\_\_\_

4. Will the residential sites, as proposed, permit development in full compliance with all zoning requirements of the existing residential zone(s)? Yes \_\_\_\_\_ No \_\_\_\_\_

5. What type of utility easements are proposed: Underground \_\_\_\_\_ Overhead \_\_\_\_\_ Combination of Both \_\_\_\_\_

6. What type of drainage is proposed? (If applicable, list more than one)

\_\_\_\_\_  
\_\_\_\_\_

7. Are special public improvements proposed in connection with development? Yes \_\_\_\_\_ No \_\_\_\_\_

8. Is a modification or exception of any portion of the Subdivision Ordinance proposed? Yes \_\_\_\_\_ No \_\_\_\_\_

If answer is "Yes", please explain the nature of the modification or exception \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

9. Remarks and/or explanation of special circumstances: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

10. Will the proposed subdivision require the city to review and decide whether this application is subject to the standards in effect prior to the effective date of the current applicable standards? Yes \_\_\_\_\_ No \_\_\_\_\_

Rights If yes, please submit a vested rights petition in accordance with Title I (General Provisions) Chapter 1.04 - Vested (See Attached).

11. Owner of record \_\_\_\_\_  
(Name & Address) (Zip) (Phone)
12. Developer \_\_\_\_\_  
(Name & Address) (Zip) (Phone)
13. Engineer \_\_\_\_\_  
(Name & Address) (Zip) (Phone)

**CASHIER'S VALIDATION**

**FEE:** 0.0 to 300 acres \$4,456.00  
301 to 600 acres \$6,570.00  
601 to 900 acres \$8,409.00  
901+acres \$11,001.00

APPLICATION MUST BE COMPLETED  
& VALIDATED PRIOR TO SUBDIVISION  
PROCESSING

OWNER SIGNATURE: \_\_\_\_\_

REPRESENTATIVE: \_\_\_\_\_

**NOTE: SUBMITTAL OF AN APPLICATION DOES NOT CONSTITUTE ACCEPTANCE FOR PROCESSING UNTIL THE PLANNING DEPARTMENT REVIEWS THE APPLICATION FOR ACCURACY AND COMPLETENESS.**